

**REMARKS/ARGUMENTS:**

Claims 1-17, 22 and 24-26 are presently pending. Claims 1, 4-7, 12-16, 22, 24 and 26 have been amended solely to expedite prosecution without prejudice or disclaimer. Accordingly, claims 1-17, 22, and 24-26 will be pending upon entry of the instant amendments. *No new matter has been added.*

Moreover, amendment and/or cancellation of the claims during pendency of the application are not to be construed as acquiescence to any of the objections/rejections set forth in any Office Action, and were done solely to expedite prosecution of the application. Applicants submit that claims were not added or amended during prosecution of the instant application for reasons related to patentability. Applicants reserve the right to pursue the claims as originally filed, subsequently amended or added, or similar claims, in this or one or more subsequent applications.

**Claim Rejections under 35 USC §112, Second Paragraph**

Claims 1, 4-7, 12-16, 22, 24 and 26 stand rejected under 35 USC §112, second paragraph. In particular, the Office Action indicates on page 2 (1.a.) that “the broad range or limitation [prodrug] together with the narrow range or limitation [ester] that falls within the broad range or limitation (in the same claim) is considered indefinite”.

Applicants respectfully disagree, but for the sake of expediting prosecution have amended claims 1, 4-7, 12-16, 22, 24 and 26 by deleting the term “prodrug”.

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Claim 24 also stands rejected under 35 USC §112, second paragraph because of the phrase “converting a compound of formula (I) into another compound of formula (I)”.

Applicants respectfully disagree, but for the sake of expediting prosecution have amended claim 24 by deleting this phrase.

As such, Applicants respectfully request withdrawal of the rejection of claims 1, 4-7, 12-16, 22, 24 and 26 under 35 USC §112, second paragraph, and favorable reconsideration.

### **Claim Rejections under 35 USC §112, First Paragraph**

Claims 1, 4-7, 12-16, 22, 24 and 26 stand rejected under 35 USC §112, first paragraph. On page 3 of the Office action it is stated that “the specification, while being enabled for making salts of the claimed compounds, does not reasonably provide enablement for making a *prodrug* of the claimed compounds”.

As discussed above, Applicants have amended claims 1, 4-7, 12-16, 22, 24 and 26 by deleting the term “prodrug” to overcome the rejection under 35 USC §112, Second Paragraph. Applicants believe this amendment also overcomes the rejection under 35 USC §112, first paragraph.

As such, Applicants respectfully request withdrawal of the rejection of claims 1, 4-7, 12-16, 22, 24 and 26 under 35 USC §112, first paragraph, and favorable reconsideration.

### **Double Patenting**

Claims 1-17, 22, 24 and 26 have been ***provisionally*** rejected on the ground of nonstatutory obviousness-type double patenting. The Examiner has suggested that claims 1-24 of co-pending application 10/599,328 (101091-1P US) is not patentably distinct “because the instant formula I is a position isomer of the formula I of the copending application 10/559328”. As highlighted above, however, this is a **provisional** obviousness-type double patenting rejection, which has not matured into an **actual** obviousness-type double patenting rejection. In this regard, Applicants correctly assert their right to hold comment on this rejection until such time as US Application No. 10/559,328 issues as a patent.

Moreover, in light of these arguments, Applicants respectfully request withdrawal of the provisional rejection of 1-17, 22, 24 and 26 on the ground of nonstatutory obviousness-type double patenting, and favorable reconsideration.

### **Claims Objections**

Claim 25 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim must refer to preceding claims in the alternative language. However, Applicants draw the Examiner's attention to the fact that claim 25 is actually an independent claim and not a multiple dependent claim.

Claim 25 relates to:

A process for the preparation of a compound according to claim 2 or a pharmaceutically acceptable salt thereof, which process comprises phosphorylation of a compound according to claim 1, followed by deprotection of the phosphate group to yield a compound according to claim 2.

Accordingly claim 25 provides a process for preparing the compounds described in claim 2 starting from the compounds described in claim 1. The references to claims 1 and 2 are included for convenience only to avoid repetition of the subject matter in claims 1 and 2. If the Examiner thinks it necessary and appropriate, Applicants will include the material from claims 1 and 2 in claim 25.

Applicants respectfully request withdrawal of the objection of claim 25 under 37 CFR 1.75(c), and favorable reconsideration.

### **Request for Phone Interview**

Once the Examiner has had an opportunity to review the comments made herein, Applicants respectfully request a phone interview in order to discuss any final details that may help result in an allowance of the application with all pending claims.

**CONCLUSION**

Applicants respectfully request favorable reconsideration and allowance of all pending claims. Passage of the instant application to issuance is earnestly solicited. As noted above, if a telephone conversation with Applicants' attorney would help to expedite the prosecution of the above-identified application, the Examiner is urged to call Applicants' attorney at the telephone number below.

Applicants do not believe any fees are presently due, however, the Commissioner is hereby authorized to charge any deficiency in the fees or credit any overpayment to deposit account No. 50-3231, referencing Attorney Docket No. 101015 – 1P US.

Respectfully submitted,

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